

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ AUG 29 2011 ★
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

JOSEPH F. EWA, M.D.P.C.,

ORDER

Appellant,

11-CV-182 (NGG)

-against-

JEMS LLC,

Appellee.

-----X

NICHOLAS G. GARAUFIS, United States District Judge.

On January 11, 2011, Appellant Joseph F. Ewa, M.D.P.C. filed a Notice of Appeal from case number 09-BK-49095, a Chapter 11 bankruptcy action brought in the United States Bankruptcy Court for the Eastern District of New York. (Docket Entry # 1.) On March 21, 2011, Appellee Jems LLC filed a Motion to Dismiss for Lack of Prosecution. (Docket Entry # 3.) Appellee correctly noted that after filing the Notice of Appeal, Appellant took no further steps to litigate this action, including those steps required under the Federal Rules of Bankruptcy. (Id. ¶ 25 (stating that Appellant “fail[ed] to take the necessary steps under Bankruptcy Rules 8006, 8007 and 8009”.) Appellee argued, pursuant to Federal Rule of Bankruptcy 8001(a), that under these circumstances the District Court may take such action as it “deems appropriate, which may include dismissal of the appeal.” (Id. (quoting Rule 8001(a)).)

Appellant now agrees that this action should be dismissed. On August 1, 2011, Appellant filed a Stipulation of Discontinuance, seeking dismissal of this action. (Docket Entry # 5.) And, on August 26, the court received a letter from Appellee advising the court that both Appellant and William Curtin of the Office of the United States Trustee have joined in Appellant’s request to dismiss this appeal. (Docket Entry # 6.)

The parties' request to dismiss this action is GRANTED, and the Clerk of Court is directed to close this case.

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York
August 26, 2011

NICHOLAS G. GARAUFIS
United States District Judge